Office Supreme Court, U. S.
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CHARLES ELMORE CROPLEY

No. 162

In the Supreme Court of the United States

OCTOBER TERM, 1951

THE UNITED STATES OF AMERICA, APPELLANT

vs.

ARNOLD L. DAILEY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

STATEMENT AS TO JURISDICTION

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In compliance with Rule 37(a) (1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court in this cause dismissing the indictment.

OPINION BELOW

The opinion and order of the District Court has not been reported. A copy thereof is annexed hereto.

JURISDICTION

The order of the District Court was entered April 24, 1951. The jurisdiction of the Supreme Court to review on direct appeal the decision of the District Court sustaining, prior to the attachment of jeopardy, the defendant's plea in bar to the indictment is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45(a), F.R. Crim. P. The following decisions sustain the jurisdiction of the Supreme Court: *United States* v. *Goldman*, 277 U.S. 229, 236-237; *United States* v. *Oppenheimer*, 242 U.S. 85; *United States* v. *Barber*, 219 U.S. 72, 78.

QUESTION PRESENTED

Whether the Wartime Suspension of Limitations Act, which suspended the "running" of any statute of limitations applicable to offenses involving fraud against the United States "until three years

after the termination of hostilities" as proclaimed by the President, is applicable to offenses of the type defined which were committed after the date of the proclamation of termination of hostilities, but within the three-year period following that date.

STATUTES AND PROCLAMATION INVOLVED

Section 1 of the Act of August 24, 1942, c. 555, 56 Stat. 747, as amended by the Act of July 1, 1944, c. 358, § 19(b), 58 Stat. 667 (18 U.S.C. (1946 ed.) 590a; now revised as permanent legislation, see (18 U.S.C. (1948 rev.). 3287, *infra*), commonly known as the Wartime Suspension of Limitations Act, provided in pertinent part on March 14, 1947, the date of the offenses involved herein:

> The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner * * * shall be suspended until three years after the termination of hostilities in World War II as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. * * *

18 U.S.C. (1948 rev.) 3287, which became effective on September 1, 1948, and hence was in effect on September 29, 1950, the date of the return of the indictment involved herein, provides in pertinent part:

> When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or

any agency thereof in any manner, whether by conspiracy or not, * * * shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

* * * * *

Section 21 of the 1948 Act revising Title 18 of the United States Code (Act of June 25, 1948, c. 645, 62 Stat. 683, 862, 868) provides:

> The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any right or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.
>
> (Among the enumerated sections is the Wartime Suspension of Limitations Act of August 24, 1942, as amended, *supra*.)

Presidential Proclamation 2714 of December 31, 1946 (12 F.R. 1), provided in pertinent part:

> * * * Although a state of war still exists, it is at this time possible to declare * * * that hostilities have terminated.
>
> Now, Therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

* * * * *

STATEMENT

On September 29, 1950, an indictment was filed in the District Court charging that, on March 14, 1947, defendant knowingly and willfully made a false and fraudulent statement in a matter within

the jurisdiction of the United States Department of Agriculture in connection with his application for Farmers Home Administration services, in violation of Section 35 A of the Criminal Code, 18 U.S.C. (1946 ed.) 80, reenacted as 18 U.S.C. (1948 rev.) 1001.

Defendant moved to dismiss on the ground that it appeared from the face of the indictment that the offense had been committed more than three years before the indictment was returned. The United States opposed the motion, contending that under the Wartime Suspension of Limitations Act, *supra,* the period of limitations did not commence to run until three years after the termination of hostilities as proclaimed by the President.

The District Court granted the motion, holding that the suspension statute applies only to offenses committed while the United States is at war, and not to offenses committed after December 31, 1946, the date proclaimed by the President as the date of the termination of hostilities.

THE QUESTION IS SUBSTANTIAL

The issue presented on this appeal is the same as that before the Supreme Court on the Government's direct appeal in *United States* v. *Louise Virginia Smith,* No. 630, O.T. 1950, probable jurisdiction noted April 16, 1951. As there pointed out, the question presented affects all offenses of the types defined in the suspension statute which were committed during the three-year period between December 31, 1946, and December 31, 1949. It is the Government's position that, under the literal language of the suspension statute, the period of

limitations for the specified offenses did not commence to run until three years after the termination of hostilities, so that prosecutions therefor may be instituted until December 31, 1952.

A separate appeal is necessary in this case to preserve the interests of the United States in the event the Supreme Court should hold that the statute of limitations did not commence to run until December 31, 1949.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

MAY 1951.

FILED United States District Court, Denver, Colorado, MAY 24, 1951.—G. Walter Bowman, Clerk.

Honorable Max M. Bulkeley, United States Attorney for the District of Colorado and the Honorable Joseph N. Lilly, Assistant United States Attorney for the District of Colorado, for the United States of America; Lennart T. Erickson, Esquire, 1002 Midland Savings Building, Denver, Colorado, for Defendant.

MEMORANDUM OPINION

KNOUS, District Judge.

The indictment herein, found on September 29, 1950, charges that on or about March 14, 1947, the defendant did knowingly and wilfully make a false and fraudulent statement concerning his

ownership of real and personal property to the Department of Agriculture, an agency of the United States, allegedly in violation of 18 U.S.C. 1001.

The defendant has moved to dismiss the indictment on the ground that the prosecution of the alleged defense is barred by the three-year Statute of Limitations. 18 U.S.C. 3282. The Government argues that the prosecution is still maintainable by reason of the wartime Suspension of Limitations, 18 U.S.C. 3287, which provides as follows:

> "When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not . . . shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress."

The purpose of the Suspension Statute was not to let crimes pass unpunished which had been committed "when the United States is at war." See *United States* v. *Gottfried*, C.C.A., N.Y. 165 F. (2d) 360. However, by its terms the Suspension Statute can have no application to offenses committed at a time when the United States was not at war.

It is conceded, that by Proclamation No. 2714, 12 Federal Register 1, the President proclaimed termination of hostilities of World War II as of December 31, 1946. The offense herein involved, alleged in the indictment as having been done on or about March 14, 1947, thus was not committed

until some two and one-half months *after* termination of hostilities of World War II as officially and conclusively proclaimed by the President and at a time when the United States was *not* at war. Hence, the wartime Suspension of Limitations Statute is without application here. The indictment herein was not found and returned until September 29, 1950, which was more than three years next after the alleged commission of the offense on March 14, 1947.

Accordingly, the defendant's motion to dismiss the indictment is granted and it is so ordered.

DATED at Denver, Colorado, this twenty-fourth day of April, A.D. 1951.

WILLIAM LEE KNOUS,
United States District Judge.

FILED AND ENTERED ON THE DOCKET United States District Court, Denver, Colorado, April 24, 1951.—G. Walter Bowman, Clerk.

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